

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS

No. 08-0568V

Filed: 18 June 2009

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BRIAN and KAREN RIUTTA, as parents	*
and natural guardians of JOSH RIUTTA,	*
	*
Petitioners,	*
	*
v.	*
	*
SECRETARY OF HEALTH	*
AND HUMAN SERVICES,	*
	*
Respondent.	*
* * * * *	*

ORDER CONCLUDING PROCEEDINGS

The Court conducted a status conference in the above-captioned case on 28 April 2009. Petitioners reported that they would soon be filing a joint stipulation of voluntary dismissal of the Petition.

Subsequently, on 29 April 2009, Petitioners filed a “Joint Stipulation for Dismissal,” articulating that Petitioners preferred to dismiss the Petition “rather than have further invasive testing done.” However, Petitioners requested that the Court retain sufficient jurisdiction over the matter so as to award reasonable attorneys’ fees and costs.

Rule 41(a)(1) of the Rules of the United States Court of Federal Claims states, in relevant part:

...[A]n action may be dismissed by the plaintiff without order of court ... by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States an action based on or including the same claim.

It is therefore the unfettered prerogative of the parties to stipulate to voluntary dismissal of a petition in the Vaccine Program. The Court states no opinion about the relative substantive merits of the underlying facts or claims premised thereupon, does not order the parties to do any thing, and

does not order judgment to be entered. Rather, the Court merely **orders** the Clerk of Court to **conclude proceedings** in this bailiwick regarding the instant Petition, case number 08-0568V. The Court reminds Petitioners of their right to attorneys' fees and costs, provided the Petition was premised on a reasonable basis and was brought in good faith. § 15(e)(1).

IT IS SO ORDERED.

s/ Richard B. Abell

Richard B. Abell

Special Master